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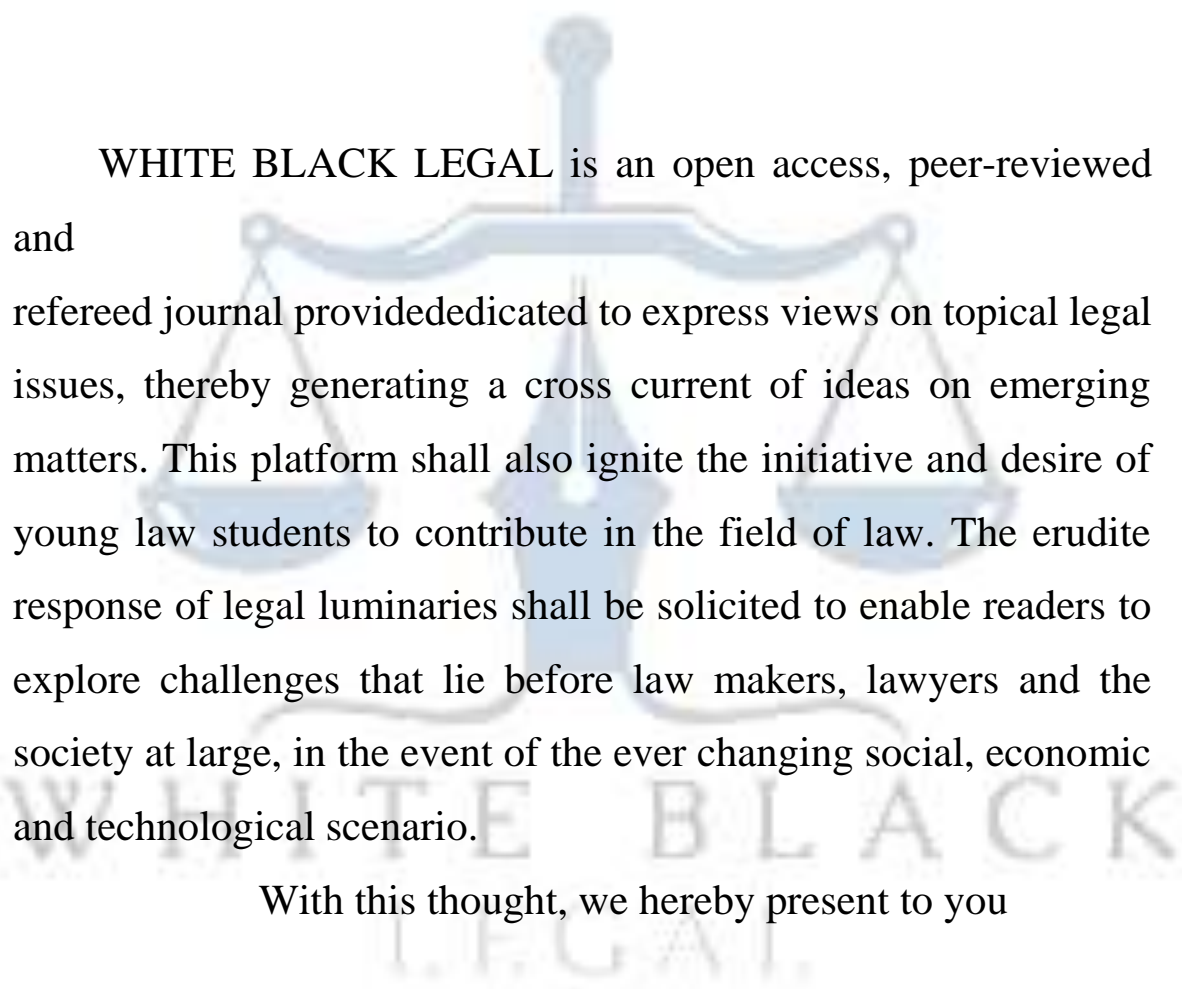


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Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **NAVIGATING BAIL LAWS IN INDIA: AN EXAMINATION OF RIGHTS, TYPES, AND CHALLENGES**

AUTHORED BY - AKSHAT AGARWAL

## **Introduction**

“Bail and Jail” both are two different sides of the same coin. A person who is not guilty or against whom the authorities do not have enough substantial evidence or proof to prove him guilty or is an innocent, gets a bail, and if a person is found to be guilty or against whom there are any substantial evidence, he is considered to be guilty, and after being convicted is sent to the jail.

“Bail, procedure by which a judge or magistrate sets at liberty one who has been arrested or imprisoned, upon receipt of security to ensure the released prisoner's later appearance in court for further proceedings.” Now, this definition of a bail comprises two main parts. The first one is that a person is released from the custody if arrested during the time of investigation or enquiry. And the second part is that the person must pay a security in exchange of a bail, so that it would function as a security that he would visit the court or the police station time to time for any updates. The main element to grant a bail is that the person should have been arrested or should be in custody, it may be a police custody or a judicial custody.

This research paper would focus on what is the bail laws in India, what are its significance, and what are its disadvantages or the challenges which should overcome.

## **Significance of bail**

Bail is the legal process that protects personal freedom of an accused person while the process is fair and just. Through bail, accused persons are freed until their guilt is proven regarding a crime, which is consistent with the right of being considered "innocent until proven guilty." Such detention is a burden on overcrowded prisons and punishes people too soon. It also allows the person to lead normal lives, continue working, and care for his or her family while preparing to defend themselves without the disruption that imprisonment creates.



Moreover, the system of bail allows for efficiency in the judicial system because it allows courts to specialize in more serious cases, where detention may be necessary, while disallowing any forms of arbitrary detention and ensuring that legal processes are not used to oppress citizens. The system, with conditions on the bail order, which is saying regular court appearances or restrictions on contacting some of the witnesses, balances a call for justice and the rights of an individual-not to forget that the accused are called into account while liberty remains.

### **Indian historical context of bail**

The Indian bail laws when traced to its roots, is based upon the legal traditions framed during the British colonial period. The Indian legal systems, when under the British, adopted some elements of English law regarding the concept of bail. Bail was implemented with caution, so that people accused of crimes should not suffer unnecessary detention during trial by striking a fine balance between dispensing justice and protecting individual liberties. It was on the principle of British law that one is considered innocent until proven guilty.

Under British rule, the older legal systems of India - particularly Mauryan and Gupta- had nothing like what we know today as bail. Justice, too, was swift, with a punishment or acquittal following close on accusations. It is only during the colonial period that the legal procedures were codified. This results in a provision related to bail being included into Criminal Procedure Code, 1898. After independence, the Indian legal system went on to add and amplify the above-mentioned provisions of bail in CrPC, 1973, thereby making this an essential element of India's criminal justice system, which safeguarded personal liberty with an equilibrium to be drawn towards the state interest of maintaining public order. And now the Bhartiya Nagarik Suraksha Sanhita (BNSS) 2023, is the successor version of the CRPC, governing the criminal laws which comprises the provisions related to bail.

### **Types of Bail**

Bail in bailable and non-bailable offences

To understand the concept of bail in bailable offences and non-bailable offences, at first, we must see what we mean by bailable and non-bailable offence.

Section 2(c) of BNSS 2023 states, "bailable offence" means an offence which is shown as bailable



in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence." Now, this definition does not make it clear that what do we mean by bailable offence and non-bailable offence. So, we can differentiate between both on basis of severity of the offence committed and the nature of the offence. Bailable offence is less serious in nature, like, for example, cases of bribery, public nuisance, in some cases, defamation, Etc. Whereas the non-bailable offences can be characterised as a more serious or a heinous offence, like rape, murder, etc.

To get a bail in bailable offence is a right for the accused person under the law. If the person has committed bailable offence, then the person can apply for the bail to the person in charge at the police station and that person in charge of the police station can grant a bail in exchange of the accused person signature in a bail bond with an amount for forfeiture, and release him on bail without permission from the court, but has to inform by submitting the documents in the court. Whereas, in a non-bailable offence, the accused person does not have any right to be granted a bail. Granting a bail to a person who committed a non-bailable offence lies under a total discretion of the judge. The judge can grant the person, a bail, based on the seriousness of the offence committed.

#### Interim bail

Interim bail is a temporary form of bail given for a brief period until the court decides on an application for a regular bail. A temporary reprieve against arrest or detention grants the accused temporary relief until the court grants or rejects the regular bail. Interim bail is granted in urgent situations wherein immediate arrest can be insured, and the accused is then spared custody of the law pending a more detailed hearing. Such bail can be extended or revoked according to discretion granted by the court in question.

#### Anticipatory bail

An anticipatory bail refers to that bail which is granted to a person in anticipation of the arrest of that person. If a person who commits an offence and knows that he might be arrested, then the person applies for this anticipatory bail in the sessions court or High Court to attain a deal in advance to not be arrested in a non-bailable offence. Granting an anticipatory bail is a total discretion of the judge on basis of the seriousness of the offence. The primary purpose of the anticipatory bail is that, to safeguard a person's liberty, especially in cases where the arrest is based on false charges, exaggerated charges or the charges are politically motivated to detain

that person unnecessarily.

### Default bail

Default bail, also known as statutory bail, is a legal right of the accused to get bail if the investigating authorities do not complete the investigation and file chargesheet within a stipulated period. It is a provision against prolonged detention without a formal charge being framed to ensure personal liberty.

To be granted a default bail to a person, the offences are categorised into two different segments.

If a person has committed an offence which involves a punishment of 10 years or more, including life imprisonment and death sentences, the investigating agencies have 90 days to investigate and file a chargesheet for the same person has a right to apply for the default bail, if the investigating authority does not file a chargesheet till the 90th day.

If a person has committed an offence involving punishment less than 10 years, then the investigating agencies have 60 days to investigate and file a chargesheet against the person. If they are not able to do so, then the accused person has a right to apply for the default bail and should be granted a bail.

As this bail is a right to the accused person. If the investigating agencies are not able to file the chargesheet under the prescribed timeline, then the person must be granted a bail. But if the person does not apply for the default bail before the investigating authority files, the chargesheet, once the chargesheet is filed, the right of the default bail is extinguished, and then the accused person can just apply for a bail but not a default bail.

### **Rights of an accused person related to bail.**

A person accused of an offence is also granted some rights related to bail. At first the person has a right to get a bail in bailable offence which is less serious in nature. Also in a non-bailable offence, although the person does not have a right to get a bail but has a right to apply for a bail in front of the court. Then in an anticipatory bail, the person also has a right to get an anticipatory bail if his being arrested on basis of exaggerated or false charges on discretion of the

court. Then a default bail is also a right granted to a person. If the investigating agencies are not able to complete the investigation and file a chargesheet within a specified timeline, then a person has a right to be freely heard for bail applications. If a person applies for a bail, then the court must hear the bail application, although they have the discretion to reject or approve the bail. The person has the right to its personal liberty, so if bail is granted to that person, if is innocent or has been arrested on basis of false charges, then the bail becomes right for that person.

### **Factors affecting granting of a bail.**

Bail in India is granted upon various considerations and subject to certain conditions that the Indian court observes before a decision is rendered. The essential elements in this case are as follows:

1. Bail is granted to a person keeping in mind the seriousness and nature of the offence committed. The judge has the full discretion to grant bail or not based on the severity or seriousness of the case. Less serious case has a right to be granted bail, whereas a more serious case like murder or a case of terrorism involves difficulty to be granted bail.
2. The criminal history of the accused person also plays a crucial role in being granted a bail. If a person has been an accused in some previous cases or might have a criminal background or criminal history, then granting a bail is tough to that person.
3. The risk of flying away or absconding, is a factor that makes the judge think twice before granting a bail. If a person is likely to fly away or escape, after being granted a bail, then the person is not granted a bail.
4. A condition is imposed by the judge, that if a person has been granted bail, then the person should not tamper the evidence and must cooperate after being granted the bail in the investigation to the investigation authorities.
5. The person on bail also should not threaten or mislead the witnesses after being released on bail, to protect themselves and should not also force someone to change their statements for the trial procedure.

### **Challenges to the bail jurisprudence in India**

The jurisprudence of bail in India faces several challenges, reflecting the complexity of balancing individual liberty with the administration of justice. Here are some key challenges:

1. Lack of uniformity and consistency in granting bail: as granting a bail is a discretion of



the judge, sometimes uniformity and consistency in granting the bail is not maintained. Some judges focus more on the aspect of severity or seriousness of the case, whereas some of the judges look upon the other matters, such as the criminal background or the risk of absconding of the accused person.

2. Overcrowded prison: there are many accused person whose trial is going on, within which some are innocent with false and exaggerated charges and some guilty accused. As some of the people bail applications are not accepted after being innocent or not guilty, they must be there in the jail, even sometimes more than they would have been in the jail for the punishment of the offence, when they are under trial.
3. Economic disparities under bail bonds: Some people, majorly belonging to the lower class with low income or people below poverty line, even though being innocent or non-guilty, are arrested on basis of false charges, but they are not able to seek bail, because they are not able to pay some amount as the forfeiture amount for the bail bond. Here, comes the economic disparity between the rich class and the poor class. Sometimes the rich class, being guilty of committing the offence also gets a bail because they have the power to pay the amount, and sometimes the poor class is not able to seek the bail because of the economic status.
4. Lack of awareness and legal representation: to apply for a bail, the person must have some knowledge about all the laws related to bail or should hire a person who is well acquainted with all the laws. Here, in India there is a major obstacle, which is the lack of awareness and legal representations, and there should be proper acknowledgement which can teach people at least some basic laws related to bail. Because of these the administrative investigating authorities try to fool all of them, for granting them a bail.
5. Misuse and use of anticipatory bail: Sometime people belonging to an elite class or from a political background after committing an offence misuses the right of anticipatory bail to protect themselves from being arrested. This leads to, increase in the level of terminal apps and decrease in the fear of being arrested, in these people's mind.
6. Therefore, an urgent need for comprehensive bail legislation that will spell out a uniform and transparent process for granting or refusing bail and codify and consolidate the current laws and practices on bail. It must also reflect the principles of liberty, dignity, and presumption of innocence as laid down in the constitution and shall, therefore, balance with victim rights and justice and public safety. Implementing full bail provisions can also reduce jail overcrowding, assure the privilege of speedy trial, and promote the ultimate objective of just and human treatment of those accused.

## **Conclusion**

Bail is one of the most significant concepts within the criminal justice system that protects an individual's rights and seeks the interest of the state in the maintenance of law and order. Bail is assumed on the concept of presumption of innocence whereby an accused person can prepare his defence while being prevented from receiving punishment too early. Despite such importance, Indian bail jurisprudence faces several challenges like orders of bail where applicants are barred from getting it due to economic inequalities and overcrowding prisons, all which leave jurisprudence unequable on balance. This problem calls for some legal framework that must, in broad terms be more definite and explained in greater details so that justice is fairly met for all irrespective of status differences of social and economic status. More importantly, comprehensive bail legislation will establish greater protection for the rights of the suspect yet without compromising public safety and justice to the victim. Codification will highlight the judicial process with clarity, reduce instances of the undue use of anticipatory bail, and thereby get rid of overcrowding in prisons. The ultimate way of balancing such conflicts would be by keeping the bail law in congruence with the principles of liberty, dignity, and fairness embodied in the Constitution for India to have a criminal justice system that is much more just.

## **References**

- 'Bail' (Encyclopædia Britannica, 9 October 2024) <<https://www.britannica.com/topic/bail-law>> accessed 16 October 2024
- Team NICA and Team NICA, 'Bail Reform in India: A Path to Justice - Current Affairs' (Current Affairs - NEXT IAS, 6 July 2024) <<https://www.nextias.com/ca/editorialanalysis/05-07-2024/bail-reform-in-india-a-path-to-justice>> accessed 17 October 2024 Bharatiya Nagarik Suraksha Sanhita, 2023 (2023, Government of India).
- 'India's Bail System: Challenges and Prospects' (Civildaily, 24 March 2024) <<https://www.civildaily.com/news/indias-bail-system-challenges-andprospects/#:~:text=Arrest%20Safeguards%3A%20Existing%20safeguards%20a%20gainst,socioeconomic%20factors%20influence%20bail%20decisions.>> accessed 17 October 2024
- 'Bail Jurisprudence in India' (Bail Jurisprudence in India | Juneja Legal - Trusted Law Firm in Ahmedabad, 29 April 2023) <<https://junejalegal.firm.in/entries/educational/bail-jurisprudence-in-india>> accessed 17 October 2024